HONOURABLE SRI JUSTICE J.CHELAMESWAR
And
HONOURABLE SRI JUSTICE D.APPARAO

THURSDAY, TWENTIETH DAY OF JULY TWO THOUSAND AND SIX

WRIT PETITION Nos.14268 & 14274 of 2006

Between:

M/s.Gammon India Limited,
Palvoncha
.. Petitioner

And

The Assistant Commissioner (CT) LTU,
Warangal and others.
..Respondents

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COMMON ORDER: (Per Hon'ble Sri JC, J)**:**

These two writ petitions are filed by the same petitioner, a Limited Company. The petitioner is a dealer as defined under the A.P. General Sales Tax Act (for brevity 'the Act') and registered as such on the rolls of the 1st respondent-Assistant Commissioner (CT) LTU, Warangal. The petitioner carries on business in construction contracts. For the years 2002-03 and 2003-04, the petitioner came to be assessed under the provisions of the Act as a case falling under Section 5 (f) of the Act. Aggrieved by the said assessments, the petitioner carried two appeals before the 2nd respondent-Appellate Deputy Commissioner (CT),

Warangal. Along with the appeals the petitioner filed two applications seeking stay of recovery of the tax found due from the petitioner by the assessing authority-1st respondent. Both the applications were rejected by the 2nd respondent by his order dated 18-04-2006. Aggrieved by the same, the petitioner carried two revisions before the 3rd respondent-Joint Commissioner (CT) (Legal), Hyderabad, which also stood rejected by proceedings dated 30-06-2006. Hence, these two writ petitions.

2. The learned counsel for the petitioner argued that there is no transfer of property from the petitioner to the employer who awarded the construction contract to the petitioner. In view of the fact that the contracts were awarded on the basis of an agreement which is popularly called as build operate and transfer (BOT) and according to the terms of the contract, the petitioner is entitled to operate the works of facility created and built by him, for a period of 30 years and therefore, the learned counsel for the petitioner argued that there is no liability to pay tax amount.

3. Heard the learned counsel for the Government Pleader for Commercial Tax.

4. We do not propose to go into the question whether there was transfer of property in the goods utilized by the petitioner in executing the facility in each of these cases, that is the matter to be decided in the appeals and the decision depends upon the interpretation of the terms of contract between the petitioner and the employer for whom the petitioner executed the work.

5. However, we are of the opinion that the ends of justice would meet if these two writ petitions are disposed of together at this stage by directing the respondents not to recover the tax pursuant to the assessment orders referred to earlier during the pendency of the appeals before the 2nd respondent on condition that the petitioner deposits 50% of the tax found due in each one of the above mentioned assessment orders, within a period of six weeks from today. While computing the tax amount of 50%, the amount if any paid already, shall be given credit to.

6. Accordingly, both the Writ Petitions are disposed of with the aforementioned direction at the stage of admission. No costs.

(J.CHELAMESWAR, J)

(D.APPARAO, J)

July 20, 2006.

KVR